



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

June 25, 2013 Government Records Council Meeting

Robert C. Scutro
Complainant

Complaint No. 2012-219

v.

City of Linden (Union)
Custodian of Record

At the June 25, 2013 public meeting, the Government Records Council (“Council”) considered the June 18, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian did not unlawfully deny access to the requested police reports because at the time of the Complainant’s July 11, 2012 OPRA request, the Complainant was already in possession of the requested records, as confirmed by the Complainant in his Denial of Access Complaint. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry. See Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008) and Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer), GRC Complaint No. 2012-330 (Interim Order February 2013).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 25th Day of June, 2013

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Acting Chair
Government Records Council

Decision Distribution Date: June 27, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 25, 2013 Council Meeting**

**Robert C. Scutro¹
Complainant**

GRC Complaint No. 2012-219

v.

**City of Linden (Union)²
Custodian of Records**

Records Relevant to Complaint: All police investigation reports regarding incident no. 9039657 on October 6, 2009.

Request Made: July 11, 2012

Response Made: July 16, 2012

GRC Complaint Filed: July 20, 2012³

Background⁴

Request and Response:

On July 11, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On July 16, 2012, the third (3rd) business day following receipt of said request, the Custodian responded in writing denying access to the requested records on the basis that victim’s records are exempt from public access under OPRA. The Custodian states that the Police Department advised him that the records pertain to a domestic violence/harassment report in which the Complainant is a suspect.

Denial of Access Complaint:

On July 20, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the Custodian unlawfully denied access to the requested records because the Custodian has previously provided said records to the Complainant. The Complainant states that in response to a previous OPRA request, the Custodian provided access to numerous police reports and audio tapes. The

¹ No legal representation listed on record.

² Joseph C. Bodek, Custodian of Records. Represented by John Hudak, Esq. (Linden, NJ).

³ The GRC received the Denial of Access Complaint on said date.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Complainant asserts that he has not been charged with any crime or ever questioned by the Police Department regarding this incident.

Statement of Information:

On September 6, 2012, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he denied access to the requested records on the basis that victim’s records are exempt from public access pursuant to OPRA’s exemption for victims’ records. The Custodian certifies that the Police Department informed him that the records pertain to a domestic violence/harassment matter in which the Complainant was a suspect.

Additionally, the Custodian asserts that the Complainant has been in possession of the requested records since October 2009. The Custodian certifies that on October 26, 2009, the City provided the requested records, among other records, to the Complainant’s wife in response to an OPRA request. The Custodian certifies that thereafter, the Complainant and his wife filed federal suit Robert C. Scutro, Sr. et al. v. City of Linden et al, Case No. 2:10-CB-05186-DRD-PS. The Custodian certifies that through their attorney, the Complainant and his wife served discovery responses on the City on April 5, 2011, producing the police report that is the subject of this Denial of Access Complaint. The Custodian also certifies that on May 10, 2011, the City provided the Complainant and his wife, through their attorney, the police report that is the subject of this complaint in response to their discovery request.

Additional Information:

On December 19, 2012, the Complainant e-mailed the GRC and confirmed that he is in receipt of police incident reports, however, the Complainant asserts that he is seeking investigation reports, not incident reports.

Analysis⁵

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008), the Appellate Division held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. *Id.* at 617. The Appellate Division noted that requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry. *Id.* (citations omitted).

⁵ There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

The Appellate Division's decision in Bart, however, turns upon the specific facts of that case. In the adjudication of the Denial of Access Complaint, the Council's decision noted the certification of the custodian that copies of the requested record were available at the Housing Authority's front desk upon simple verbal request by any member of the public; moreover, the complainant actually admitted that he was in possession of this record at the time of the OPRA request for the same record. Bart v. City of Paterson Housing Authority, GRC Complaint No. 2005-145 (May 2006).

Additionally, in Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer), GRC Complaint No. 2012-330 (Interim Order February 2013), the complainant sought access to student discipline reports. The custodian's counsel responded indicating that he provided the records in response to a prior OPRA request. The Council held that:

“[t]he Custodian did not unlawfully deny access to the records responsive to request item no. 8 because at the time of the Complainant's December 14, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008).”

Here, the Custodian denied access to the requested records claiming said records are exempt from public access as victim's records, but certified that he previously provided the Complainant and his wife with the same records in response to prior OPRA requests and litigation discovery. Further, the Complainant confirmed that he is in receipt of police reports in his Denial of Access Complaint, as well as in his December 19, 2012 e-mail to the GRC. Although the Complainant asserted that the records he possesses are not the records requested, the Custodian certified that the records requested are the same records the Complainant possesses.

Therefore, the Custodian did not unlawfully deny access to the requested police reports because at the time of the Complainant's July 11, 2012 OPRA request, the Complainant was already in possession of the requested records, as confirmed by the Complainant in his Denial of Access Complaint. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry. See Bart, supra, and Owoh, supra.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the requested police reports because at the time of the Complainant's July 11, 2012 OPRA request, the Complainant was already in possession of the requested records, as confirmed by the Complainant in his Denial of Access Complaint. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the

Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry. *See* Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008) and Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer), GRC Complaint No. 2012-330 (Interim Order February 2013).

Prepared By: Dara L. Barry
Communications Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

June 18, 2013